

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 17th day
of July, 2013.

In the Matter of Kansas City Power & Light Company's)
Practices Regarding Customer Opt-Out of) File No. EO-2013-0359
Demand-Side Management Programs and Related Issues)

ORDER DENYING REHEARING AND RECONSIDERATION

Issue Date: July 17, 2013

Effective Date: July 17, 2013

The Missouri Public Service Commission is denying the *Application for Clarification, Reconsideration and/or Rehearing of Kansas City Power & Light Company* ("motion"), including the motion's request for a procedural conference. The *Consent Order and Dismissal* ("decision") stands on the plain language of the statutes and regulations, without interpretation. The motion cites no law requiring a different result.

Background

This action addresses how the parties shall administer certain provisions of the Missouri Energy Efficiency Investment Act ("MEEIA")¹ and related law.

Kansas City Power & Light Company ("KCPL") filed the motion.² In the motion, Kansas City Power & Light Company ("KCPL") seeks clarification, reconsideration, or rehearing of the decision.³ In the decision, the Commission ruled on the request for approval included in the *Non-Unanimous Stipulation and Agreement* ("settlement"). The

¹ Section 393.1075, RSMo Supp. 2012.

² Electronic Filing and Information System ("EFIS") No. 42, filed on July 15, 2013.

³ EFIS No. 39, issued on June 26. All dates are in 2013.

settlement was filed by KCPL, The Commission's staff, Office of the Public Counsel, and Midwest Energy Consumers Group ("signatories") with no objection from Missouri Department of Natural Resources and Midwest Energy Users Association.

The order did not "approve" the stipulation's terms as requested, but:

- Approved of disposition by settlement procedure;
- Incorporated the settlement into the decision as a consent order; and
- Dismissed the action because the parties resolved all disputes.

At the signatories' request,⁴ the Commission extended the effective date of the decision until July 16, to accommodate deliberation over filing post-decision motions.⁵ Only KCPL seeks clarification, reconsideration, or rehearing, and no other party joined in the motion. That, the absence of legal authority in the motion, and the consequent absence of substantive rulings in this order, constitutes good cause for this order to take effect less than 30 days from issuance.⁶

A. Standard

The standard for rehearing is:

1. [T]he commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear [.]
2. . . . Such application shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable [.]

* * *

4. If, after a rehearing and a consideration of the facts, including those arising since the making of the order or

⁴ Section 386.490.2, RSMo 2000.

⁵ EFIS No. 41, *Order Extending Effective Date*, issued on June 28.

⁶ Section 386.490.2, RSMo 2000.

decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. [⁷]

The standard for reconsideration is:

Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable. At any time before a final order is issued, the commission may, on its own motion, reconsider, correct, or otherwise amend any order or notice issued in the case. [⁸]

In support of the motion, KCPL offers the following.

B. Procedural Law Governing the Settlement

KCPL argues that the decision represents a departure from previous practice. Included in the motion are citations to Commission orders, up to 43 years old, disposing of a stipulation and agreement by a different procedure. Absent from the motion is any authority giving any weight to any of those citations in this action.⁹ On the contrary, the statutes provide that no order of the Commission in any action binds the Commission in this action.¹⁰ The statutes outweigh KCPL's citations.

KCPL also cites MEEIA's statutory authorization for the Commission to approve a settlement under a specified standard:

⁷ Section 386.500, RSMo 2000.

⁸ 4 CSR 240-2.160(2).

⁹ Including any reference to any analysis in any of those orders that the Commission might find persuasive.

¹⁰ Section 386.490.2, RSMo Supp. 2012.

The commission . . . may . . . approve corporation-specific settlements . . . as necessary, to ensure that electric corporations can achieve the goals of this section. [¹¹]

But the signatories sought no relief under that provision. The settlement includes no citation to that provision, no argument that approval of the settlement is necessary to ensure that KCPL can achieve MEEIA's goals, and no facts relevant to that standard.

Even if the other signatories sought relief under that statute, the statute would not require that relief. "May" commits the disposition of a settlement to the Commission's discretion.¹² Sound discretion means carefully considering justice, equity, and the logic of the circumstances.¹³

The Commission's consideration of the circumstances, including the controlling law, appears at length in the decision and KCPL does not show any lapse in that exercise.

Two more points are crucial to this order. First, some of the settlement's terms are outside the Commission's jurisdiction to order—like dismissal of an action in the Missouri Court of Appeals and approval of tariff sheets not yet filed. That conclusion goes unmentioned—much less challenged—in the motion. Second, the decision represents only a direct application of the plain words in the statutes and regulations governing this action. That disposition is authorized by law and KCPL cites nothing to bar it.

¹¹ Section 393.1075.11, RSMo Supp. 2012.

¹² *S.J.V. ex rel. Blank v. Voshage*, 860 S.W.2d 802, 804 (Mo. App., E.D. 1993).

¹³ *Peters v. ContiGroup*, 292 S.W.3d 380, 392 (Mo. App., W.D. 2009).

Because KCPL cites no law supporting any result other than that set forth in the decision, KCPL has not met the standards for reconsideration or rehearing, and the Commission will deny the motion.

C. Substantive Law Governing an AAO

KCPL cites one term of the settlement in particular. That term is the provision that the other signatories will not oppose an accounting authority order (“AAO”) for the deferred recording of certain amounts. KCPL alleges that KCPL’s compliance with other settlement terms will be difficult unless the Commission issues an AAO.

KCPL cites no law governing an AAO, and no evidence or stipulated fact relevant under such law, nor even a conclusory reference to any ultimate fact. Instead, KCPL cites only the other signatories’ agreement not to oppose the issuance of an AAO, with no law showing that such position factors into any analysis.¹⁴ KCPL offers no authority under which the signatories’ agreement to a remedy, statutorily committed to the Commission’s discretion, is binding.¹⁵

KCPL does not argue, and so has not shown, that Commission approval is even required for deferred recording of any item under law.¹⁶ If KCPL believes that the law requires Commission approval for deferred recording, nothing bars KCPL from showing

¹⁴ Under Section 536.060, RSMo 2000, parties may waive procedural requirements which would otherwise be necessary before final decision, but a decision that is not based on fact and substantive law is not authorized under any law that KCPL cites.

¹⁵ A stipulation relating to an interest of a party that is wholly under that party’s control and does not affect the procedure of a case is binding and enforceable. However, a stipulation that affects the procedure of a case is not binding. Further, a stipulation in contravention of a statute is not permitted. *Tidwell v. Walker Const.*, 151 S.W.3d 127, 133 (Mo. App., S.D. 2004) (citations omitted).

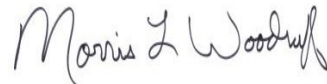
¹⁶ In this regard, it may be helpful to note that the Commission’s regulation 4 CSR 240-40.040(1) incorporates the Uniform System of Accounts (“USoA”), which provides that Commission approval must be obtained to treat an item of less than 5 percent as “extraordinary” for deferred recording. Unless Commission approval is required by that law, or some other law, a ruling on an AAO application has no effect.

the facts relevant to that relief in another action. In this action, no such facts or evidence are before the Commission.

THE COMMISSION ORDERS THAT:

1. The *Application for Clarification, Reconsideration and/or Rehearing of Kansas City Power & Light Company* is denied.
2. This order shall be effective immediately upon issuance.
3. This file shall close on July 18, 2013.

BY THE COMMISSION

A handwritten signature in cursive script, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

R. Kenney, Chm., Jarrett, Stoll, and
W. Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge